

The Honorable Benjamin H. Settle

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA

LDK SOLAR CO., LTD, a People's Republic
of China corporate entity,

Plaintiff,

VS.

SILICON & SOLAR, LLC, a Washington corporation,

Defendant.

Nº. C09-5077 BHS

**PLAINTIFF'S MOTION FOR THE
APPOINTMENT OF A RECEIVER**

**NOTE ON MOTION CALENDAR:
March 27, 2009**

I. INTRODUCTION AND RELIEF REQUESTED

Plaintiff LDK Solar Co., Ltd (“LDK”) respectfully requests that the Court appoint a receiver to marshal and manage the assets of Defendant Silicon & Solar, LLC. Defendant Silicon & Solar, LLC is an insolvent Washington entity that received \$5,749,371.23 from LDK in advance payment for goods that Silicon & Solar never did, and now states it never will,

**PLAINTIFF'S MOTION FOR THE
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(C09-5077 BHS)**

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1 deliver. Appointment of a general receiver is necessary order to protect LDK and potentially
 2 other claimants.

3 II. FACTS

4 LDK is a Chinese company that designs and manufactures multi-crystalline solar
 5 wafers, the principal component used to make solar cells that convert sunlight into electricity.
 6 (Declaration of Zhou Min ¶ 2.) Silicon & Solar is Washington company that has served as
 7 LDK's supplier of IC grade silicon, a necessary component of solar wafers. (Id. ¶ 4.) LDK and
 8 Silicon & Solar have done business since 2005. (Id.) LDK always paid for the silicon in
 9 advance of delivery. (Id. ¶ 5.)

10 In late 2008, Silicon & Solar ceased making scheduled deliveries of silicon to LDK.
 11 (Id. ¶ 6.) LDK has made payments of \$5,749,371.23 for IC grade silicon that Silicon & Solar
 12 has never delivered. (Id. ¶ 7.) In January, 2009, Silicon & Solar apologetically informed LDK
 13 that Silicon & Solar had ceased operations and closed its doors. (Id. ¶ 8.) Silicon & Solar has
 14 refused to deliver the \$5,749,371.23 worth of IC grade silicon pursuant to the contracts or
 15 return the money, despite demand. (Id. ¶ 9.)

16 On February 7, 2009, Silicon & Solar informed LDK that Silicon & Solar had lost most
 17 of LDK's \$5,749,371.23 in failed transactions with its sub-suppliers. (Declaration of Ken
 18 Leava ¶ 2.) In one case, silicon was delivered but it did not meet LDK's specifications
 19 (meaning there should be something to resell). (Id.) In another case, the silicon was not
 20 delivered at all. In a third case, the sub-supplier closed down. (Id.) At least some of the sub-
 21 suppliers are in the U.S. (Id.) Others may be in Germany and Japan. (Id.)

22 In response, LDK proposed an immediate meeting to choreograph pursuit of Silicon &
 23 Solar's sub-suppliers. (Declaration of James D. Nelson ¶ 2 and Ex. A.) Silicon & Solar finally
 24 responded almost two weeks later on February 25, 2009. (Id. ¶ 3 and Ex. B.) Silicon & Solar

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1 expressed some willingness to make financial records available to LDK. (Id.) Silicon & Solar,
2 however, refused to make its management available to assist LDK. (Id.)

3 **III. ARGUMENT AND AUTHORITY**

4 **A. Appointment of a General Receiver Is Warranted.**

5 Fed. R. Civ. P. 66 and LR 66 provide for the appointment of receivers. Washington law
6 also provides a remedy for persons in LDK's predicament: appointment of a receiver, who is "a
7 person appointed by the court as the court's agent, and subject to the court's direction, to take
8 possession of, manage, or dispose of property of a person." RCW 7.60.005(10). Receivership
9 is appropriate where, as here, undisputed claims are made against an insolvent corporation:

10 [A] receiver shall be appointed only if the court additionally
11 determines that the appointment of a receiver is reasonably
12 necessary and that other available remedies either are not
13 available or are inadequate:
14
15 (i) In an action against any person who is not an individual . . . if
16 that person is insolvent or is not generally paying the person's
17 debts as those debts become due unless they are the subject of
18 bona fide dispute, or if that person is in imminent danger of
19 insolvency.
20 RCW 7.60.025. "The test of the solvency of a corporation is its ability to meet its obligations
21 in the ordinary course of business" Warren v. Porter Const. Co., 29 Wn.2d 785, 786, 189 P.2d
22 255, 256 (1948).

23 Silicon & Solar, which has admitted that it can neither deliver the silicon nor reimburse
24 LDK the money it has paid for the silicon, and which states that it is no longer in business,
25 concedes that it cannot meet its obligations in the daily course of business and is an insolvent
corporation for the purpose of Washington's receivership law. Appointment of a receiver to
marshal the assets of Silicon & Solar and LDK's claim against those assets is clearly warranted.
Id. at 787.

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1 Further, where the corporation is completely defunct, as Silicon & Solar appears to be,
2 it is appropriate to appoint a general receiver, with authority to marshal all its assets, manage its
3 daily business, and handle all claims; if Silicon & Solar can prove that the general receivership
4 should be converted to a more limited, custodial receivership, the Court can convert it. RCW
5 7.60.015.

6 B. Thomas M. Keller Would Is Uniquely Qualified to Serve as Receiver in this Case.

7 Thomas M. Keller is uniquely qualified to serve as receiver in this case because he has
8 31 years of experience in similar matters, is a licensed certified public accountant, and is a
9 practicing business attorney. Mr. Keller's biographical information is attached as Exhibit A.

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2 **IV. CONCLUSION**

3 Silicon & Solar admits it has gone out of business and cannot meet its obligation to
4 LDK. Silicon & Solar owes LDK more than \$5 million worth of goods it makes no
5 representation that it will ever be able to deliver. The Court should promptly appoint a receiver
6 to protect the assets of Silicon & Solar from dispersal and protect LDK's interest in those
7 assets. Thomas M. Keller is uniquely qualified to serve as receiver in this case. A proposed
8 order is attached.

9 DATED this 12th day of March, 2009.

10 BETTS, PATTERSON & MINES, P.S.

11 By /s/ James D. Nelson
12 James D. Nelson, WSBA #11134
13 Victoria M. Pond, WSBA #33159
14 Attorneys for Plaintiff LDK Solar Co., Ltd.
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1 CERTIFICATE OF SERVICE
2

3 I hereby certify that on March 12, 2009, I electronically filed the foregoing with the
4 Clerk of the Court using the CM/ECF System which will send notification of such filing to the
following: NONE

5 and I hereby certify that I caused Washington Legal Messengers to personally serve the
6 registered agent for defendant, Silicon & Solar, LLC with a true and correct copy of the
foregoing document, including any attachments and exhibits, on March 11, 2009. The
defendant's registered agent was served at the following address:

7 Renie Duvall
8 33508 N.E. 82nd Ave.
9 La Center, WA 98629-2819

10 A true and correct copy of the foregoing document, including any attachments and
11 exhibits, was also served on March 11, 2009 upon:

12 Gregory J. Dennis, Esq.
13 Landerholm Memovich Lansverk & Whitesides, P.S.
14 805 Broadway Street, Suite 1000
Vancouver, WA 98666-1086

15 A Declaration of Service will be prepared by Washington Legal Messengers and will be
16 filed with the Court.

17 DATED this 12th day of March, 2009 at Seattle, Washington.

18 /s/ James D. Nelson

19 James D. Nelson, WSBA #11134
Victoria M. Pond, WSBA #33159
20 Attorney for Plaintiff LDK Solar Co., Ltd.
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